

**ALASKA INTERAGENCY CONSULTATION AND COORDINATION  
AGREEMENT FOR  
FHWA/DOT&PF TRANSPORTATION PROJECTS**

**Applicability**

This Agreement was developed to expedite and improve the environmental decision making and permitting of all Alaska Department of Transportation and Public Facilities (DOT&PF) federal-aid transportation program projects requiring environmental approval where the Federal Highway Administration (FHWA) is the designated lead federal agency under FHWA environmental regulations 23 CFR 771 and historic preservation under 36 CFR Part 800. When this Agreement and any other supporting agreements are signed, they become immediately applicable to an in-process project at its current stage.

This Agreement recognizes that the statutory authorities and governing regulations of each agency (see Appendix A) dictate its roles and responsibilities. This Agreement does nothing to change the regulatory relationships among agencies, but seeks to facilitate agency communication and coordination. This Agreement does not apply to projects subject to Title XI of the Alaska National Interest Lands Conservation Act (ANILCA). For those projects, the implementing regulations of 43 CFR Part 36 establish the process.

This Agreement also:

- Responds to the Transportation Efficiency Act for 21<sup>st</sup> Century (TEA-21), Section 1309 and Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews;
- Replaces and expands on the expired Alaska's Interagency Working Agreement to Integrate Section 404 and Related Permit Requirements in NEPA (June 1997); and
- Realizes signatory agency missions through early and effective interagency consultation and coordination for transportation projects in Alaska.

**Purpose**

This Agreement ensures early and effective interagency consultation and coordination for transportation projects developed by DOT&PF. The intent of this Agreement is to allow signatory agencies to focus staff resources on major projects (i.e., Environmental Assessments [EAs] and Environmental Impact Statements [EISs]), while ensuring the adverse effects of minor projects are identified and addressed. DOT&PF and FHWA will strive to incorporate design elements to produce a better environment, conserve natural resources, and result in long-term socio-economic benefits.

This Agreement promotes a safe, efficient, and environmentally sound transportation system by committing signatory agencies to cooperatively:

- Ensure appropriate interaction among agencies during all DOT&PF project phases (i.e., planning through maintenance);
- Resolve project issues and conflicts quickly and effectively early in the process;
- Integrate National Environmental Policy Act (NEPA) analysis, permit reviews, and interagency consultations to avoid duplication;
- Establish reasonable timeframes for agency reviews of project related documents;
- Encourage constructive communication to build mutual understanding of each agency's responsibilities; and
- Develop supporting agreements, as necessary, to effect the above.

The measurement of success for these agreements should be a shorter timeline for project development and reduced environmental review time. However, the signatories recognize that delays are often the result of reprioritization and other factors unrelated to agency review.

### **Consultation and Coordination**

Signatory agencies will work cooperatively, respond to each other in a timely manner, and clearly explain their concerns early and throughout:

- The transportation planning process to identify resource issues, identify data gaps and address them, and assess impacts; and
- The project development and review process to identify concerns, explain engineering designs, understand agency roles and requirements, and strengthen intergovernmental relationships.

To jointly expedite the environmental review process for transportation projects, DOT&PF will consult with signatory agencies to determine that:

- The project's statement of purpose and need does not restrict the range of reasonable alternatives;
- The range of alternatives being considered is appropriate for NEPA and permitting decisions; and
- The issues and concerns that must be evaluated for NEPA, Section 404(b)(1), and other applicable approvals have been identified.

The consultation requirements will be identified in the project review procedures that support this agreement. If, after interagency consultation, any signatory agency has an unresolved issue, that agency shall initiate the issue resolution process.

Signatory agencies will identify point(s) of contact for given geographic areas and/or projects. However, all signatory agencies realize that the ability of any given agency to participate in a project review may be limited by staffing and funding constraints or other agency priorities. DOT&PF may offer signatory agencies the opportunity to conduct necessary technical studies in their area of expertise.

DOT&PF will convene an annual statewide meeting to apprise signatory agencies of projects subject to this Agreement and any changes in environmental regulations or recurring problem areas. In addition, throughout the year, signatory agencies will keep each other informed on project changes, including changes in priority or major scheduling changes, changes in environmental conditions, impacts, and other related issues. All signatory agencies recognize that ongoing communication, coordination, and cooperation will ensure that the Agreement goals are met.

### **Issue Resolution**

Signatory agencies will develop and use a process to bring issues to the appropriate management level for a timely resolution. Signatory agencies agree to resolve issues at the lowest appropriate level. If issues arise during environmental review that cannot be resolved at the staff level, the issue resolution procedures will be initiated. Issues include, but are not limited to:

- Disagreement on the nature or extent of impacts;
- No response to request for information or data within an agreed-upon timeframe;
- A substantive concern identified by signatory agencies during the review of the environmental document;
- Disagreement regarding jurisdiction;
- Disagreement regarding the implementation of these procedures; and
- Disagreement on the need for, a request for, or a proposal for mitigation.

### **Supporting Agreements**

This Agreement provides a framework for the development of the following supporting agreements:

- Planning and project review process, including scoping;
- Processing procedures for minor projects;
- Mitigation process; and
- Issue resolution procedures.

The supporting agreements will be circulated to all signatory agencies for approval. Each supporting agreement, once approved, becomes part of this Interagency Consultation and Coordination Agreement.

In addition, related agreements will be modified, updated, and/or developed, if appropriate, by the relevant agencies and appended to this Agreement, including but not limited to:

- Section 106 Programmatic Agreement: FHWA, DOT&PF, State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation;
- Essential Fish Habitat (EFH) Consultation Procedures: FHWA, DOT&PF, National Oceanic and Atmospheric Administration (NOAA) Fisheries; and
- Abbreviated Permit Process (APP) for Categorical Exclusions (CE): U.S. Army Corps of Engineers (USACE), DOT&PF, all signatory agencies.

### **Funding Agreements**

DOT&PF may choose to supplement signatory agencies' staffing resources as necessary to ensure that all environmental reviews, analyses, opinions, and issuance of any permits or approvals will be conducted concurrently and completed within a cooperatively determined time period. If DOT&PF supplements staff resources through funding to any or all of the signatory agencies, DOT&PF and the agency will develop a separate funding and schedule agreement. These funding agreements will only be used for additional resources to meet negotiated time frames identified in the Review Process supporting agreement. DOT&PF may also choose to supplement signatory agencies' staffing resources, as necessary, to conduct project-related research.

### **Agreement Evaluation and Modification**

Any signatory agency may propose amendments to the Agreement in writing, and they will become effective upon approval by all of the signatory agencies. The DOT&PF state environmental coordinator and signatory agency counterparts will review the Agreement during the statewide annual meeting to determine if it requires:

- Corrections for clarity;
- Substantive proposals for improvements;
- Changes to reflect concerns identified during the past year by any of the signatory agencies; or
- Continuation without modification.

Amendments made to the Interagency Consultation and Coordination Agreement require circulation of a new signature sheet. Any supporting agreement may be modified with the approval of the signatory agencies. Such modification will not affect other supporting agreements or this Interagency Consultation and Coordination Agreement.

**Effective Date, Limitations, and Termination**


This Agreement will remain in effect for five years and becomes effective when signed by all signatory agencies. Any signatory agency may choose to withdraw from this Agreement upon 30-day written notice to all other signatory agencies, in which case the Agreement remains in effect for the other signatory agencies. Prior to its expiration, the Agreement will be evaluated for renewal.

Undertakings by signatory agencies pursuant to this Agreement are subject to the availability of funds and staff resources.

In accordance with the Anti-Deficiency Act, 31 U.S.C., Section 1341, nothing in this Agreement shall be construed as binding any of the federal agency signatories to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

Nothing in this Agreement is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of the agencies involved.

**Signatory Agencies**

  
Federal Highway Administration

Date 2/7/05

  
Alaska Department of Transportation and Public Facilities

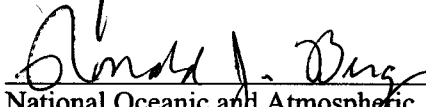
Date 2/7/5

  
U.S. Environmental Protection Agency


Date 4/21/05

  
U.S. Fish and Wildlife Service

Date 2/17/05

  
National Oceanic and Atmospheric Administration Fisheries

Date 4/4/05

  
U.S. Army Corps of Engineers


Date 1 March 2005

  
Alaska Department of Environmental Conservation

Date 2-7-05

  
Alaska Department of Natural Resources

Date 2-15-05

  
Alaska Department of Fish and Game

Date 3/15/05

## Appendix A Applicable Federal and State Laws and Regulations

Agency	Environmental Legislation Affecting FHWA Transportation Projects	Legislative Reference
All federal agencies	National Environmental Policy Act of 1969	P.L. 91-190
All federal agencies	CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Protection Act	40 CFR § 1500-1508
All federal agencies	Environmental Quality Improvement Act of 1970	42 CFR § 4371
All federal agencies	Anti-Deficiency Act	31 U.S.C. 3141
All federal agencies	Protection of Wetlands	E.O. 11990
All federal agencies	Floodplain Management	E.O. 11988
FHWA	Environmental Impact and Related Procedures	23 CFR § 771
FHWA, DOT&PF	Transportation Efficiency Act for 21 <sup>st</sup> Century (TEA-21)	P.L. 105-178
FHWA	Section 4(f) of the Department of Transportation Act of 1966	49 U.S.C. 303
FHWA	Consistency for Federal Assistance to State and Local Governments	15 CFR § 930, Subpart F
FHWA	Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations	E.O. 12898
FHWA	Title VI of the Civil Rights Act of 1964	42 U.S.C. § 2000(d)(4)
FHWA	Title VIII of the Civil Rights Act of 1968	42 U.S.C. § 2000d <i>et seq.</i>
FHWA	Americans with Disabilities Act of 1990, as amended	42 U.S.C. § 12101
FHWA	Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended	42 U.S.C. § 4601
FHWA	Acquisition of Right-of-way	Section 1017, ISTEA
FHWA	Consistency for Activities Requiring a Federal License or Permit	15 CFR § 930, Subpart D
FHWA	Geometric and Construction Standards for Interstate System	23 U.S.C. § 109(b)
FHWA	Standards	23 U.S.C. § 109
FHWA	Bridges, Structures and Hydraulics	23 CFR § 650
FHWA	Procedures for Abatement of Highway Traffic and Construction Noise	23 CFR § 772
FHWA	Noise Control Act of 1972	42 CFR § 4901
FHWA, SHPO, ACHP	Section 106 of the National Historic Preservation Act, Implementing Regulations, Protection of Historic Properties	36 CFR § 800
FHWA, SHPO, ACHP	Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended	16 U.S.C. § 470(f), 470(h)-2(a)
FHWA, SHPO	Protection and Enhancement of the Cultural Environment	E.O. 11593
Federal agencies, SHPO	Archaeological Resources Protection Act of 1979	16 U.S.C. § 470aa-470mm

Federal agencies, SHPO	Native American Grave Protection and Repatriation Act	25 U.S.C. 3001 <i>et seq.</i>
Federal agencies, SHPO	Native American Grave Protection and Repatriation Act, Implementing Regulations	43 CFR § 10
EPA, USACE, DEC	Clean Water Act of 1977	33 U.S.C. § 1251
EPA, USACE, DEC	Federal Water Pollution Control Act (1972), as amended	33 U.S.C. § 1251-1376
EPA, DEC, FHWA	Clean Air Act, as amended	42 U.S.C. § 7401
EPA, FHWA	Conformity to State or Federal Implementation Plans for Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws	40 CFR § 93, Subpart T
EPA, ADEC	Designation of Areas for Air Quality Planning Purposes	40 CFR § 81
EPA, DEC	Safe Drinking Water Act, as amended	42 U.S.C. § 300(f); P.L. 93-523
EPA	Resource Conservation and Recovery Act of 1976	42 U.S.C. § 6901
EPA	Comprehensive Environmental Response, Compensation and Liability Act of 1980	42 U.S.C. § 9601
USACE, USCG	River and Harbors Act of 1899	33 U.S.C. 401 <i>et seq.</i>
USF&WS	Bald and Golden Eagle Protection Act of 1940	16 U.S.C. Section 668-668d
USF&WS	Migratory Bird Treaty Act of 1918	16 U.S.C. § 703-712
USF&WS, NOAA Fisheries, FHWA, ADF&G	Fish and Wildlife Coordination Act of 1934	16 U.S.C. § 661-667e
USF&WS, FHWA, ADF&G, DOT&PF	Federal Aid in Sport Fish Restoration Act	16 U.S.C. 777 <i>et seq.</i>
USF&WS, NOAA Fisheries, FHWA	Interagency Cooperation--Endangered Species Act of 1973, as amended 1978, 1979 and 1982	50 CFR § 402
NOAA Fisheries, FHWA, DOT&PF	Magnuson-Stevenson Fishery Conservation and Management Act (Magnuson-Stevens Act) of 1976, as amended	16 U.S.C. 1801 <i>et seq.</i>
OCZM NOAA, DNR/OPMP	Coastal Zone Management Act of 1972	16 U.S.C. § 1451 <i>et seq.</i> , 15 CFR 930
NPS, BLM	Wild and Scenic Rivers Act	16 U.S.C. § 1271
NPS, DNR/DPOR	Land and Water Conservation Fund of 1965, as amended 1996	16 U.S.C. § 460l(4)-460l(11); 16 § 460l(9)-460l(10)(e)
DNR/OPMP	Intergovernmental Coordination	E.O. 12372
DEC	Environmental Conservation	AS 46.03
DEC	Air Quality Control	AS 46.14
DEC	Hazardous Waste – Solid and Hazardous Waste Management Practices	Section 46.06.021
DNR	Natural Resources – Alaska Land Act	Chapter 38.05
DNR/OHMP	Natural Resources – Fishway Act	Section 41.14.840
DNR/OHMP	Natural Resources – Protection of Fish and Game	Section 41.14.870
SHPO	Natural Resources – Historic Preservation	Chapter 41.35
DNR, DEC	Natural Resources – Alaska Water Use Act	Chapter 46.15
DNR/OPMP	Natural Resources – Alaska Coastal Management Program	Chapter 46.40
DNR/DMLW	Natural Resources – Permits	Section 38.05.850
ADF&G	Fish and Game – Conservation and Protection of Alaskan Wildlife	Chapter 16.20
DOT&PF	Highways and Ferries	AS 19

## Abbreviations and Acronyms

§	Section symbol (Sec.)
ACHP	Advisory Council on Historic Preservation
AS	Alaska Statute
DF&G	Alaska Department of Fish and Game
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEC	Alaska Department of Environmental Conservation
DNR/DMLW	Alaska Department of Natural Resources/Division of Mining, Land, and Water
DNR/DPOR	Alaska Department of Natural Resources/Division of Parks and Outdoor Recreation
DNR/OHMP	Alaska Department of Natural Resources/Office of Habitat Management and Permitting
DNR/OPMP	Alaska Department of Natural Resources/Office of Project Management and Permitting
DOT&PF	Alaska Department of Transportation and Public Facilities
E.O.	Executive Order
EPA	Environmental Protection Agency
<i>et seq.</i>	"and the following"
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
NPS	National Park Service
NRCS	National Resources Conservation Service
NOAA Fisheries	National Oceanic and Atmospheric Administration Fisheries
OCZM NOAA	Office of Coastal Zone Management National Oceanic and Atmospheric Association
P.L.	Public Law
SHPO	State Historic Preservation Officer
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USCG	United States Coast Guard
USF&WS	United States Fish and Wildlife Service